

## HUMAN SERVICES BOARD

# INTRODUCTION

## FINDINGS OF FACT

3. The Department determined that the petitioner earned \$890.75 during the month of October 1999 and \$1,067.50 during the month of November 1999. The Department determined that if

it had used October's income to calculate the petitioner's eligibility for November of 1999 he would have not have been eligible for November. It also concluded that if it had used the November income to determine his December 1999 eligibility, he would have been ineligible for that month as well. The petitioner was paid \$127 in food stamps for each month. The Department, therefore, determined that the petitioner had been overpaid \$254 in food stamps for the two months and sent him a notice dated May 24, 2000 advising him of that calculation and that he was required to repay that amount.

4. The notice sent to the petitioner informed him that the overpayment occurred because the Department did not receive correct and timely information from the petitioner about his working situation. The petitioner was advised that the over-payment could be repaid in several ways, including deduction from his ongoing Food Stamp benefits.

5. The petitioner was notified a few days later in a second letter that his current Food Stamp benefit of \$127 per month would be reduced by \$12 per month beginning July 1, 2000 as a method of repayment. The petitioner appealed that decision on June 23, 2000 but it was not received in time to prevent the reduction of the benefit for July 1.

6. The petitioner does not dispute that he earned the above amounts during November and December of 1999 and that he received \$254 in Food Stamps to which he was not entitled. He does dispute the finding by the Department that it did not receive timely information from him. He says that he did report his change in income and that the Department failed to include it in the calculations through no fault of his. His lack of fault, in his view, should prevent the Department from attempting to recover any overpaid amounts at present.

7. The Department does not have a record of the income report form that the petitioner says he filed. While the Department does not agree that the miscalculation was its error, it does agree that the failure to count this financial information was the result of someone's mistake and was not an intentional action on the part of the petitioner to conceal his income.

ORDER

The decisions of the Department establishing the overpayment amount and the amount of the recoupment are affirmed.

REASONS

The Food Stamp program operates under federal laws and rules that are implemented by the state agency through regulations which adopt options available to the state in verbatim language lifted from the federal regulations. See 7 C.F.R. § 271 et. seq. The regulations require that a claim for the overissuance of benefits paid erroneously within the twelve months before the date of discovery be made against every household. That claim must be made whether the overissuance occurred because of "inadvertent household error" or "administrative error". F.S.M. § 273.18 (b).<sup>1</sup> The amount of the overpayment is determined by deducting the amount of payment the household should have received for the month from the amount it actually was allotted. F.S.M. § 273.18 (c).

Under the above regulations, the Department was absolutely required to establish a claim against the petitioner for the return of Food Stamps overpaid within the last year whether the overpayment occurred due to the petitioner's error or the Department's error. The regulations contain no exceptions to this requirement. Therefore, it is

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<sup>1</sup> The same regulation also requires establishing a claim for an overissuance that is the result of an "intentional program violation." "Intentional program violations" are treated differently (more harshly)

not necessary to determine whose error resulted in the overpayment, since the regulations require the establishment of claim for the return of any overpayment in either case.

The petitioner does not dispute the amount the Department says he was overpaid. The Department correctly calculated that claim by comparing the amounts which the petitioner did receive in each of those two months, \$127, to the amount he should have received based on his income, \$0.<sup>2</sup> The difference for the two months totaled \$254. As that amount was paid in error to the petitioner within the last twelve months, the Department properly established \$254 as the amount of the claim.

The petitioner was further notified that the Department intended to collect on that claim by reducing the amount of his future Food Stamp benefits by \$12, or ten percent of his

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from the two mentioned in the main text and, as that type of claim is not at issue here, it will not be discussed.

<sup>2</sup> Because this was not presented as a disputed matter, no evidence was taken on the actual calculation of eligibility for the two months at issue. The maximum gross monthly income which may be earned by a single person household for eligibility is \$893 per month. P-2590C. The petitioner was clearly over that amount for November based on his October earning. (The Food Stamp program calculates eligibility by using earnings from the month prior to the month benefits are to be paid unless the income is not likely to continue. F.S.M. 273.10a) The petitioner was not over that gross income amount for December based on his November earnings which were \$2.25 less than the maximum. However, if the maximum gross income is met it is subject to further deductions and then compared to a maximum net income which for a one-person household is \$687 per month. See P-2590C. The petitioner apparently had few, if any, deductions other

grant (currently \$127). The regulations require state agencies to collect payments from households currently on Food Stamps by reducing the amount of future benefits unless the amount has been repaid in a lump sum. F.S.M. 273.18(g) (4). Claims established as the result of either an "inadvertent household error" or an "administrative error" are treated identically in the regulations in terms of the level of the recoupment which "shall be the greater of ten percent of the household's monthly allotment or \$10 per month." F.S.M. 273.18 (g) (4) (i) and (ii).<sup>3</sup>

In this case, the petitioner has not agreed to repay the amount in a lump sum as he does not feel he should be required to pay it at all. The Department's proposal to reduce the petitioner's Food Stamp allotment by \$12 per month represents 10 percent of his current benefit and is thus authorized by law. As the Department has acted within its regulations in this matter, its decision must be upheld by the Board.

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than the \$134 standard work deduction which would bring him below the \$687 per month mark for December.

<sup>3</sup> "Intentional program violation" claims are collected at a rate of twenty percent of the household's monthly income. F.S.M. 273.18(g)(4)(iii)